HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

No. W.P. 5972/2001 (S/S)

Sri Laxman Singh
Sri Dinesh Chandra Bhatt
Vs

State of U.P.
Additional Director of Education
Lucknow

Approved for reporting.

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Not approved for reporting

Date of decision 7.7.2005

Initial of Judge

HIGH COURT OF UTTARACHAL AT NAINITAL

Writ Petition no. 5972 (SS) of 2001
(Old Number 36155 of 1991)

1. Sri Laxman Singh
2. Sri Dinesh Chandra Bhatt
3. Sri Yashpal Singh
4. Sri Ratnakar Singh ..... Petitioners

Versus

1. State of U.P.
2. Additional Director of Education, Lucknow
3. The Director Inspector of Schools, Pauri
4. The Committee of Management, Public Inter College, Lalitpur Khatli
5. State of Uttaranchal
6. Director of Education (Secondary) Uttaranchal Dehradun
7. Joint Director of Education, Garhwal Division, Pauri Garhwal

Sri B.D. Upadhyay, Advocate for the petitioners
Sri H. Belwal, Brief Holder for the respondents.

Dated: July 07,2005

Hon'ble Rajesh Tandon J.

By the present writ petition the petitioner have prayed for a writ of certiorari quashing the order dated 11.11.1991 passed by the D.I.O.S. Pauri Garhwal, annexure-15 to the writ petition and further prayed their regularization as Lecturers/L.T. Grade Teachers with effect from the date of their initial appointments.

Briefly stated the respondent no.4 is an Intermediate College, which is recognized by the Board of High School and Intermediate Education. The institute receives grant-in-aid from the State Government and the payment of salary of the

teachers and other employees of the institution is paid in accordance with the provisions of U.P. High Schools and Intermediate College (Payment of Salaries of Teachers and others Employees) Act, 1971. The recognition to the science classes in the institution was given by the State Government in the year 1989 and four posts of science teachers namely physics, Chemistry, Zoology and Botany were also sanction on 15.3.1991. When no teacher was appointed from the Commission on the sanctioned posts, the Committee of Management in exercise of the power provided under section 18 of the Act No. 5 of 1982, made of advertisement in the daily newspaper “Simant Verta” on 5.5.1991 inviting applications for appointment of the Assistant Teachers in Lecture Grade on ad-hoc basis. The interview was held on 24.5.1991 and selection committee recommended the names of the petitioners to the Management Committee, who passed resolution on 18.7.1991 appointing the petitioners No. 1 to 4 as Lecturer in Math, Zoology, Chemistry and Physics respectively. All papers of the said resolution were sent to the District Inspector of Schools, Pauri Garhwal for his approval. After approval of the District Inspector of Schools, Pauri Garhwal, the Committee of Management issued appointment letters to the petitioners on 28.8.1991 and after receipt of appointment letters petitioners joined on their respective posts on 28.8.1991. The services of the petitioners were terminated vide order dated 7.9.1991 by the Committee of Management after receiving a telegram from the District Inspector of Schools, as the Government had imposed restriction on fresh appointments. The petitioners came to know that the State Government vide G.O. dated 26.9.1991 omitted the restriction on appointment in Government service.

The petitioners thereafter submitted a representation to the Committed of Management on 22.10.1991. The District Inspector Schools passed order-dated 11.11.1991 that in view of the restriction imposed by the State Government, it is not possible for him to give approval on ad-hoc appointments.

The petitioners have submitted that they were appointed on ad hoc basic against the submitted vacancies and they are entitled to be considered for regularization in view of the provision of section 33-C inserted in Section 33 of the U.P. Secondary Education (Services Selection Boards) Act, 1982. The petitioners also claimed salary from the date of their initial appointments.

I have heard Sri B.D. Upadhyay, Advocate for the petitioners and Sri Harendra Belwal, Brief holder on behalf of the respondents.

It is not disputed that the petitioners were appointed on ad hoc basis against the substantive vacancies on 28.8.1991 by the Committee of Management of Public Intermediate College, Laitpur Khatli, District Pauri Garhwal after obtaining approval from the District Inspector of Schools. Undoubtedly the appointments were made under section 18 of U.P. Secondary Education (Services Selection Boards) Act, 1982 (hereinafter called the 'Act') therefore, the petitioners having been appointed under section 18 of the Act, are entitled to get benefit of the provisions of Section 33-C of the Act. On behalf of the respondents the argument was advanced that in view of the ban on appointments created by G.O. dated 30.7.1991, the petitioners cannot be extended benefit of regularization under the said provisions also. Section 33-C, which was inserted by U.P. Act No. 25 of 1998 in the principal Act, reads as under:

“33-C Regulation of certain more appointments (1) Any teacher who:

(a) *(i) was appointed by promotion or by direct recruitment on or after may 14, 1991 but nor later than August 16, 1993 on ad hoc basis against substantive vacancy in accordance with section 18, in the Lecturer grade or rained Graduate grade,*

(ii) was appointed by promotion on or after July 31, 1988 but not later than August 6, 1993 on ad hoc basis against a substantive vacancy in the post of as Principal or Headmaster in accordance with section 18;

(b) *Possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with, the provisions of the Intermediate Education Act, 1921;*

(c) *Has been continuously serving the institution from the date of such a appointment up to a date of the commencement of the U.P. Secondary Education Services Commission (Amendment) Act, 1998;*

(d) *Has been found suitable for appointment in s substantive capacity by a selection Committee consulted under sub section (2);*

Shall be given substantive appointment by the Management.

A perusal of the above regulation shows that an incumbent may get benefit of these provisions, if he was appointed as Lecturer/L.T. Grade Teacher on ad hoc basis against substantive vacancy in accordance with section 18 on or after May 14, 1991 but not later than August 16, 1993. It is not disputed that the entire petitioner have got appointment on 28.8.1991, the petitioners are entitled to the benefit of the amended provisions in the statute.

So far as the ban created by the Government vide G.O. dated 30.7.1991 is concerned, the leaned counsel for the petitioners invited my attention to the judgment passed by this

Court in Writ Petition No. 3172 (SS) of 2001 Gajendra Singh Negi vs. District Inspector of Schools, Pauri Garhwal and others and similar other writ petitions, on 30.9.2003. The Single Judge of this Court after relying upon the judgment of the Division Bench of Allahabad High Court in the matte rof Durgesh Kumar vs. State of U.P. & others (1995) U.P. L.B.E.C. 1387 has held that the effect of the G.O. dated 30.7.1991 got nullified in relation to the appointment made in the interregnum period. Consequently the application of the provision of section 33-C the G.O. dated 30.7.1991 has had no effect whatsoever.

In view of my findings above the provisions of section 33-C of U.P. Secondary Education (Services Selection Boards) Act, 1982 are applicable to the case of the petitioners the impugned order dated 11.11.1991, annexure-15 to the writ petition deserves to be quashed and the petitioners are entitled to be considered for regularization.

Accordingly, the writ petition is allowed. The order dated 11.11.1991, passed by the respondent no. 3, the District Inspector of Schools, Pauri Garhwal is quashed. The respondents are directed to consider the petitioners for their regularization if they fulfil the criteria laid down under section 33-C of the Act and also possess the requisite qualification, within a period of three months after the receipt of certified copy of this judgment. No order as to costs.

Rajesh Tandon J.

Dated: July 07, 2005
*Dhyani